

REMARKS

Claims 1-23 are pending in this application. The Examiner has maintained the
5 rejection of:

- (1) claims 1-6, 9-11, 13-17 and 21-23 under 35 U.S.C. § 102(b) over US-A-4,197,316 (“*Yu*” reference);
- (2) claims 1-6, 9-11, 13-17 and 21-23 under 35 U.S.C. § 102(b) over US-A-4,234,599 (“*Van Scott*” reference);
- 10 (3) claims 7-8 and 18-20 under 35 U.S.C. § 103(a) over *Yu* in view of US-A-5,523,090 (“*Znaiden*” reference);
- (4) claims 7-8 and 18-19 under 35 U.S.C. § 103(a) over *Van Scott* in view of *Yu* and *Znaiden*;
- (5) claim 12 under 35 U.S.C. § 103(a) over *Yu* and *Znaiden* in view of US-B-6,180,133 (“*Quan*” reference) or *Yu*, *Van Scott* and *Znaiden* in view of *Quan*; and
- 15 (6) claims 1-11 and 13-23, provisionally under the judicially created doctrine of obviousness-type double patenting over claims 1, 2, 4-7, 10-12 and 14-16 of copending Application No. 09/677,737.

Applicants are herein amending claims 1, 10, 13, 21 and 23.

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Applicants are herein amending claims 1, 13 and 23 to specify that the quaternary amino compound is selected from dimethylaminoethanol, trimethylaminoethanol, isopropanoldimethyl amine, ethylethanolamine, 2-butanolamine and serine. Support for the amendment may be found, *inter alia*, in the specification on page 2, line 18-page 3, line 2
25 (referring to “same compound” as Perricone – namely dimethylaminoethanol (DMAE) – rather than dimethylaminoethanolamine), in the Examples and in original claims 10 and 21.

Applicants submit that the amendment to the claims does not introduce new matter and is fully supported by the specification and claims, as originally filed. Applicants request
30 the Examiner to enter the amendment under 37 C.F.R. § 1.116(b) because the amendments to the claims either cancel claims, comply with requirements of form expressly set forth in a

previous Office Action, or present the rejected claims in better form for consideration on appeal.

Rejection under 35 U.S.C. § 102(b) over *Yu*

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The Examiner has maintained the rejection of claims 1-6, 9-11, 13-17 and 21-23 under 35 U.S.C. § 102(b) over US-A-4,197,316 ("*Yu*" reference). Applicants are herein amending claims 1, 13 and 23 to specify that the quaternary amino compound is selected from dimethylaminoethanol (DMAE), trimethylaminoethanol, isopropanoldimethyl amine, ethylethanolamine, 2-butanamine and serine and claims 10 and 21 to specify that the quaternary amino compound is dimethylaminoethanol (DMAE). Applicants respectfully submit that *Yu* does not disclose, teach or suggest any of these quaternary amino compounds. Accordingly, applicants submit that *Yu* does not anticipate claims 1-6, 9-11, 13-17 and 21-23, as amended, and request the Examiner to withdraw the rejection under 35 U.S.C. § 102(b) over *Yu*.

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Rejection under 35 U.S.C. § 102(b) over *Van Scott*

The Examiner has maintained the rejection of claims 1-6, 9-11, 13-17 and 21-23 under 35 U.S.C. § 102(b) over US-A-4,234,599 ("*Van Scott*" reference). Applicants are herein amending claims 1, 13 and 23 to specify that the quaternary amino compound is selected from dimethylaminoethanol (DMAE), trimethylaminoethanol, isopropanoldimethyl amine, ethylethanolamine, 2-butanamine and serine and claims 10 and 21 to specify that the quaternary amino compound is dimethylaminoethanol (DMAE). Applicants respectfully submit that *Van Scott* does not disclose, teach or suggest any of these quaternary amino compounds. Accordingly, applicants submit that *Van Scott* does not anticipate claims 1-6, 9-11, 13-17 and 21-23, as amended, and request the Examiner to withdraw the rejection under 35 U.S.C. § 102(b) over *Van Scott*.

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Rejection under 35 U.S.C. § 103(a) over *Yu* in view of *Znaiden*

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The Examiner has maintained the rejection of claims 7-8 and 18-20 under 35 U.S.C. § 103(a) over *Yu* in view of US-A-5,523,090 ("*Znaiden*" reference). Claims 7-8 and 18-20 are directed to the use of a mixture of specific anionic counterions (malic acid and glycolic acid)

at specific ratios (about 1:1 to about 1:5) and in certain pH ranges. Applicants submit that *Yu* does not anticipate claims 7-8 and 18-20 because it is missing the specific required quaternary amino compounds and *Znaiden* does not supply these missing elements. Accordingly, applicants submit that claims 7-8 and 18-20 are not obvious under 35 U.S.C. § 103(a) over *Yu* in view of *Znaiden* and request the Examiner to withdraw the rejection.

Rejection under 35 U.S.C. § 103(a) over *Van Scott* in view of *Yu* and *Znaiden*

The Examiner has maintained the rejection of claims 7-8 and 18-19 under 35 U.S.C. § 103(a) over *Van Scott* in view of *Yu* and *Znaiden*. Claims 7-8 and 18-19 are directed to the use of a mixture of specific anionic counterions (malic acid and glycolic acid) at specific ratios (about 1:1 to about 1:5). Applicants submit that *Van Scott* does not anticipate claims 7-8 and 18-19 because it is missing the specific required quaternary amino compounds and *Yu* and *Znaiden* do not supply these missing elements. Accordingly, applicants submit that claims 7-8 and 18-19 are not obvious under 35 U.S.C. § 103(a) over *Van Scott* in view of *Yu* and *Znaiden* and request the Examiner to withdraw the rejection.

Rejection under 35 U.S.C. § 103(a) over *Yu* and *Znaiden* in view of *Quan* or *Yu*, *Van Scott* and *Znaiden* in view of *Quan*

The Examiner has maintained the rejection of claim 12 under 35 U.S.C. § 103(a) over *Yu* and *Znaiden* in view of US-B-6,180,133 (“*Quan*” reference) or *Yu*, *Van Scott* and *Znaiden* in view of *Quan*. Claim 12 is directed to a skin treatment method wherein the composition is incorporated into select material carriers, such as wipes. As discussed above, because none of *Yu*, *Van Scott* and *Znaiden* discloses, teaches or suggests the specific required quaternary amino compounds and *Quan* does not supply the missing element, no combination of these four references renders obvious claim 12. Accordingly, applicants request the Examiner to withdraw the rejection of claim 12 under 35 U.S.C. § 103(a).

Obviousness-type Double Patenting

Claims 1-11 and 13-23 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1, 2, 4-7, 10-

12 and 14-16 of copending Application No. 09/677,737. Applicants request that this rejection be deferred pending some identification of allowable subject matter, as it likely can be readily resolved (depending upon the subject matter allowed) through the filing of a suitable terminal disclaimer.

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Conclusions

Applicants request the Examiner to:

- (1) enter the amendment; and
- 10 (2) reconsider and withdraw the rejection of claims 1-23; and
- (3) pass claims 1-23, as amended, to allowance.

If the Examiner is of a contrary view, the Examiner is requested to contact the undersigned attorney at (215) 557-3861.

15 Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,

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Wendy A. Choi
Registration No. 36,697

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Date: June 6, 2002
WOODCOCK WASHBURN LLP
One Liberty Place - 46th Floor
Philadelphia, PA 19103

30 Telephone : (215) 568-3100
Facsimile : (215) 568-3439



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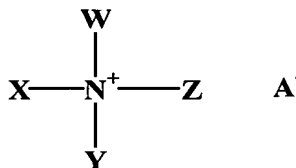
VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

5 Please amend claims 1, 10, 13, 21 and 23, as follows:

1. (amended) A method to improve skin firmness comprising topically applying to affected skin areas a composition comprising:

10 (a) an effective amount of an acid salt formed from a compound selected from the group consisting of dimethylaminoethanol, trimethylaminoethanol, isopropanoldimethyl amine, ethylethanolamine, 2-butanamine and serine [a compound of the formula:



15 wherein W, X, Y and Z are selected from the group consisting of hydrogen, C₁-C₃ alkyl group, C₂-C₄ alkanol group,

wherein at least one of X, Y, or Z is a C₂-C₄ alkanol group bearing at least one hydroxyl group and optionally at least one carboxyl group, and

20 wherein A is] with a mixture of anionic counterions derived from at least two pharmaceutically acceptable acids and esters thereof; and

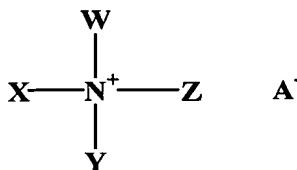
(b) a cosmetically acceptable carrier.

10. (amended) A method according to claim 1, wherein said compound is [an acid salt of monomethylaminoethanol,] dimethylaminoethanol [dimethylaminoethanolamine, trimethylaminoethanol, isopropanolamine, triethanolamine, isopropanoldimethylamine, isopropanoldimethylamine, ethylethanolamine, 2-butanamine, choline and serine].

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13. (amended) A method to improve the appearance of facial contours comprising topically applying to affected skin areas a composition comprising:

- (a) an effective amount of an acid salt formed from a compound selected from the group consisting of dimethylaminoethanol, trimethylaminoethanol, isopropanoldimethyl amine, ethylethanolamine, 2-butanamine and serine [a compound of the formula:



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wherein W, X, Y and Z are selected from the group consisting of hydrogen, C₁-C₃ alkyl group, C₂-C₄ alkanol group,

wherein at least one of X, Y, or Z is a C₂-C₄ alkanol group bearing at least one hydroxyl group and optionally at least one carboxyl group, and

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wherein A is] with a mixture of anionic counterions derived from at least two pharmaceutically acceptable acids and esters thereof; and

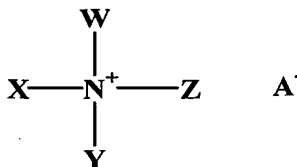
- (b) a cosmetically acceptable carrier.

15 21. (amended) A method according to claim 13, wherein said compound is [an acid salt of monomethylaminoethanol,] dimethylaminoethanol [dimethylaminoethanolamine, trimethylaminoethanol, isopropanolamine, triethanolamine, isopropanoldimethylamine, isopropanoldimethylamine, ethylethanolamine, 2-butanamine, choline and serine].

20 23. (amended) A method for reducing the appearance of sagging skin comprising topically applying to affected skin areas a composition comprising:

- (a) an effective amount of an acid salt formed from a compound selected from the group consisting of dimethylaminoethanol, trimethylaminoethanol, isopropanoldimethyl amine, ethylethanolamine, 2-butanamine and serine [a compound of the formula:

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wherein W, X, Y and Z are selected from the group consisting of hydrogen, C₁-C₃ alkyl group, C₂-C₄ alkanol group,

wherein at least one of X, Y, or Z is a C₂-C₄ alkanol group bearing at least one hydroxyl group and optionally at least one carboxyl group, and

5 wherein A is] with a mixture of anionic counterions derived from at least two pharmaceutically acceptable acids and esters thereof; and
(b) a cosmetically acceptable carrier.